

FREDERICK C. FARRINGTON
GEORGE M. HOFFMAN

IBLA 78-194

Decided June 30, 1978

Appeal from decision of the New Mexico State Office, Bureau of Land Management, denying the petition for reinstatement of oil and gas leases NM-23352-A and NM-23353-A.

Affirmed.

1. Oil and Gas Leases: Reinstatement

When an oil and gas lease terminates automatically by operation of law because the annual rental was not paid on or before the anniversary date, the lessee must show, among other things, that the failure to pay rental timely was not due to a lack of reasonable diligence or that there was a justifiable excuse for the delay in order to have the lease reinstated. Making oil and gas lease rental payments 19 days after they are due does not constitute reasonable diligence.

2. Oil and Gas Leases: Reinstatement

To constitute a justifiable excuse for delay in making an oil and gas lease rental payment sufficient to warrant reinstatement of a lease terminated for late payment of rental, a lessee must generally show the delay was caused by factors outside his control which were the proximate cause of his failure to pay the rental timely. The following are not ordinarily justifiable excuses: (1) reliance on receipt of a courtesy notice of rental; (2) selling a house and moving to another; (3) failure to show a causal link between the illness of lessee's friend and the failure to pay timely.

3. Agency -- Oil and Gas Leases: Rental -- Oil and Gas Leases:
Termination

In the absence of joint lessees establishing the existence of a prior agreement that a particular lessee was responsible for payment of the oil and gas lease rental, the failure of the joint lessees to pay the rental timely is a joint failure and the joint lessees must each satisfy the reinstatement requirements of 30 U.S.C. § 188(c) (1970). In the absence of reasonable diligence, the lease cannot be reinstated unless each joint lessee can show that he has a justifiable excuse for failing to pay the rental timely.

APPEARANCES: Frederick C. Farrington and George M. Hoffman, pro sese.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Frederick C. Farrington and George M. Hoffman appeal from the January 5, 1978, decision of the New Mexico State Office, Bureau of Land Management (BLM), denying their petition for reinstatement of oil and gas leases NM-23352-A and NM-23353-A. The leases terminated automatically by operation of law under 30 U.S.C. § 188(b) (1970) when the annual rentals were not paid on or before the anniversary date of the leases, August 1, 1977. The rentals were paid by money order received at the State Office on August 19, 1977.

Appellants assert that they paid the rentals with reasonable diligence. They explain that the address on record with BLM is that of appellant Farrington. Thus, the BLM courtesy notice of rental due would be sent to him and not to appellant Hoffman. However, Farrington had to leave town due to the sudden illness of his mother and was absent when the courtesy notice would have arrived. During this period, Hoffman was in the process of selling his house and moving to another. Also, he was regularly visiting a close personal friend who had been seriously ill for about 9 weeks at that time. Hoffman states that he realized on August 18 that the rentals were due when he recalled that the previous year he and his wife had been on vacation and had paid the rentals before leaving. He then telephoned the BLM State Office on August 19 and wired the payment the same day.

[1] When an oil and gas lease terminates automatically by operation of law under 30 U.S.C. § 188(b) (1970) because the annual rental was not paid on or before the anniversary date of the lease, the lessee must show, among other things, that the failure to pay rental timely "was either justifiable or not due to a lack of reasonable diligence" on his part in order to obtain reinstatement of

the lease. 30 U.S.C. § 188(c) (1970). Reasonable diligence normally requires sending the rental payment "sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment." 43 CFR 3108.2-1(c)(2); Albert R. Fairfield, 34 IBLA 132 (1978).

Under the above standard, appellants did not exercise reasonable diligence when they paid the rentals 19 days after they were due. Helena Silver Mines, Inc., 30 IBLA 262 (1977). Appellants must therefore show that their failure to pay the rentals timely was justifiable.

[2] Failure to exercise reasonable diligence may be justifiable when it is caused by factors outside the lessee's control which were the proximate cause of the failure. Leonard A. J. Tancredi, 32 IBLA 325 (1977). Appellant Hoffman has not established that factors outside his control were the proximate cause of his failure to pay the rentals timely. A courtesy notice is merely a reminder that rental is due. A lessee must pay the rental timely whether or not he receives the notice. Accordingly, failure to receive the notice cannot justify a late rental payment. Helena Silver Mines, Inc., *supra*. Selling a house and moving to another is not ordinarily an event outside a lessee's control that would constitute a justifiable reason for failure to pay rental timely. *See Sara Turscan*, 23 IBLA 370 (1976). In addition, Hoffman has not shown any causal link between his friend's illness and the failure to pay timely. *See C. H. Winters*, 34 IBLA 350 (1978).

[3] It is possible that appellant Farrington's absence due to the unexpected illness of his mother constitutes a justifiable excuse for his failure to pay the rental timely. However, Farrington is not the sole lessee. We cannot ignore the fact that appellants are joint lessees.

In prior decisions involving joint lessees, the Board has allowed reinstatement of a terminated oil and gas lease where the following elements are present: (1) the joint lessees have previously agreed among themselves that a particular joint lessee was responsible for payment of the rental; and (2) the joint lessee who had been designated as responsible for the payment of the rental exercised reasonable diligence or had a justifiable excuse for failing to pay the rental timely. Ada E. Lundgren, 17 IBLA 132 (1974); R. G. Price, 8 IBLA 290, 292 (1972) (Appendix, James M. Coffey); *see David Kirkland*, 19 IBLA 305 (1975). Also where the joint lessee who was responsible for payment of the rental did not exercise reasonable diligence or did not have a justifiable excuse for failing to pay the rental timely, a lease was not reinstated. Sara Turscan, *supra*, *see Stanley J. Pirtle*, 26 IBLA 348 (1976) (lessee's business associate who had agreed to pay rental failed to do so timely).

The above decisions involving joint lessees are predicated on principles of agency. Here, appellants have submitted no evidence showing that they had a prior agreement designating one or the other as responsible for the payment of the rentals. Therefore, no principles of agency are involved in their case. In the absence of a prior agreement regarding payment of oil and gas lease rental, the failure of joint lessees to pay the rental timely is a joint failure and the joint lessees must each satisfy the reinstatement requirements of 30 U.S.C. § 188(c) (1970). In the absence of reasonable diligence, the lease cannot be reinstated unless each joint lessee can show that he has a justifiable excuse for failing to pay the rental timely.

We held above that appellants did not exercise reasonable diligence and that appellant Hoffman's explanation of his failure to pay the rental timely does not constitute a justifiable excuse. Therefore, the leases cannot be reinstated under 30 U.S.C. § 188(c) (1970) regardless whether appellant Farrington's failure to pay timely was justifiable. The BLM State Office properly denied appellants' petition for reinstatement.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joan B. Thompson
Administrative Judge

I concur:

Douglas E. Henriques
Administrative Judge

ADMINISTRATIVE JUDGE GOSS DISSENTING:

On appeal, appellants have alleged facts which further explain those previously furnished to the State Office:

[T]he notice was sent to Mr. Farrington only. It happened at the time of the arrival of the notice that Mr. Farrington had to be out of town on a family emergency. Mr. Farrington's mother in Massachusetts had suffered a stroke. At this critical time it was urgent for Mr. Farrington to procure adequate care for her at her location.

With such a situation as this, surely any reasonable person would understand that Mr. Farrington's mind and attention were absorbed completely with this matter, and that matters like payment of bills could not possibly be attended to promptly.

In regard to Mr. Hoffman: According to the procedure of the Bureau, he did not receive a Notice of Payment Due; nor would he have been able to contact Mr. Farrington. Compounding circumstances leading to oversight of payment was the fact that Mr. Hoffman and family were selling their home and moving into another. At the same time a close friend, for whom Mr. Hoffman assumes much personal responsibility, was hospitalized in a near death case for several weeks. [Emphasis added.]

In C. H. Winters, *supra*, the Board stated at 352:

Similarly, we deem the circumstances here to justify the delay in payment. Payment was mailed on the anniversary date, there is no hint of any attempt to take advantage of the delay, and appellant's postponement of his return home to play the Good Samaritan to an ailing friend was the proximate cause of his default, and constitutes an acceptable reason for his failure to pay the rental timely.

Under certain circumstances a serious illness of a close friend can thus be considered a justifiable excuse. Here, appellants stated the friend was near death and that Hoffman assumes a personal responsibility for him. While appellants' presentation could have been more clear, I would hold that they have alleged the type of justifiable excuse and causal connection for which the reinstatement statute

was intended. See Lone Star Producing Company, 28 IBLA 132, 143-46 (1976) (dissent).

Joseph W. Goss
Administrative Judge

